S.B. CIVIL MISC. APPEAL NO. 943/2007
(National Insurance Co. Ltd. Vs. Harish Chandra Verma & ors.)

Date of Order :: 13th February 2007

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr.Jagdish Vyas for the appellant
Mr.Hemant Kumar for the respondents-caveator

In this appeal by the insurer against the award dated 16.11.2006 made by the Motor Accidents Claims Tribunal, Ratangarh insofar it relates to Claim Case No.1/2005 essentially questioning the quantum of compensation awarded, though the matter is posted for motion-admission, learned counsel Mr.Hemant Kumar has put appearance in caveat for the claimants-respondents Nos.1 to 4; and in view of consensus stated by learned counsel for parties, the matter is disposed of finally while dispensing with service on other proforma respondents.

For awarding compensation to the dependents of vehicular accident victim Mukesh Kumar, said to be about 25 years of age, the Tribunal did not accept assertion of the claimants about the income of the deceased at Rs.5,500/- per month and instead put an estimate on his income at Rs.3,000/- but then proceeded to apply directly a multiplier of 17 to the amount of estimated income and thereby assessed pecuniary loss at Rs.6,12,000/- (3000x12x17). The Tribunal

then allowed Rs.2,000/- towards funeral expenses and Rs.1,000/- towards litigation expenses and thus assessed total compensation in the sum of Rs.6,15,000/-. Thereafter the Tribunal observed that after deducting Rs.50,000/- already awarded, the remaining amount of Rs.5,65,000/- be paid; but then proceeded to award further amount of Rs.10,000/- to each of the four claimants as non-pecuniary loss.

Thus, in the ultimate analysis, the award of compensation as allowed by the Tribunal stands in the sum of Rs.6,55,000/-. The Tribunal has allowed interest at the rate of 6% per annum from the date of filing of claim application with stipulation that for non-payment within two months, interest shall be payable at the rate of 9% per annum.

The insurer has assailed the award aforesaid being exorbitant and excessive and being against settled legal principles. On the matter being taken up for motion hearing, Mr. Hemant Kumar learned counsel for respondents Nos.1 to 4 in all fairness conceded that the award on its quantification of compensation stands on a higher side where the learned Tribunal has omitted to deduct one-third on personal expenditure of the deceased while assessing pecuniary loss; and submitted that the award may be re-stated while allowing compensation in the sum of Rs.4,20,000/- with interest at the rate of 6% per annum from

the date of filing of claim application.

Learned counsel Mr.Jagdish Vyas appearing for the appellant-insurer in equal fairness has agreed to the proposition put forward by Mr.Hemant Kumar and submitted that the award may be suitably modified. Learned counsel for the parties have placed on record the terms of settlement arrived at between the parties for modification of the award.

Having examined the impugned award, this Court is satisfied that the figure arrived at by the parties in consensus remains that of just compensation admissible in this case and the award deserves to be modified accordingly. The amount allowed by the Tribunal suffers from obvious error when the Tribunal has not accounted for personal expenditure of the deceased. The amount of non-pecuniary loss allowed by the Tribunal at Rs.10,000/- to each of the four claimants also stands on higher side. The Tribunal has further erred in putting a stipulation of penal interest at the rate of 9% per annum for failure to deposit within two months.

When the award of compensation is made after deducting one-third on personal expenditure of the deceased, even on the amount of income estimated by the Tribunal, and while allowing reasonable amount towards non-pecuniary loss and funeral expenses, this Court is of opinion that the amount of Rs.4,20,000/- stated in consensus by the parties remains

that of just compensation admissible in this case; and after deducting Rs.50,000/- already paid towards No Fault Liability, the claimants shall be entitled for an amount of Rs.3,70,000/- with interest at the rate of 6% per annum from the date of filing of claim application.

Accordingly, this appeal succeeds to the extent indicated above and with the consent of parties, the award is modified and re-stated allowing compensation in the sum of Rs.4,20,000/- to the claimants; and after adjustment of the amount of Rs.50,000/- already paid towards No Fault Liability, the claimants shall be entitled to the remaining amount of Rs.3,70,000/- with interest at the rate of 6% per annum from 04.01.2005, the date of filing of claim application.

The remaining amount payable under the modified award shall be deposited by the insurer, of course with adjustment of the amount already paid, within 30 days from today and the Tribunal shall proceed with apportionment and disbursement in the manner and proportion as contemplated by the impugned award. There shall be no order as to costs of this appeal.

Though the parties have amicably settled and the appeal has accordingly been decided but before parting with this matter, this Court is constrained to put on record a note of disapproval of the process of quantification of compensation

as adopted by the Tribunal that has led to filing of this appeal by the insurer. It has been fair on the part of the parties to have agreed on reasonable amount of compensation in this appeal; and it has been fairer on the part of the claimants to have agreed on reduction of the amount awarded by the Tribunal but this Court is of opinion that in the first place the Tribunal ought to have considered the law applicable for quantification of compensation and to have made an award of just and reasonable compensation. The award in question shows disregard of sound and settled principles related with the process of quantification of pecuniary loss. Further, the manner of awarding excessive amount towards non-pecuniary loss cannot be appreciated. The award of compensation in a vehicular accident claim case is required to be that of just compensation for the claimants for the loss suffered by them due to the accident; and the amount of just compensation ought to be arrived at by application of relevant principles; and, while the Tribunal should not deny just, proper and reasonable compensation, at the same time the Tribunal ought to guard against the propositions leading to over-compensating and making of exorbitant award.

MK **(DINESH MAHESHWARI), J.**